



October 18, 2002

Mr. Lou Bright  
General Counsel  
Texas Alcoholic Beverage Commission  
P.O. Box 13127  
Austin, Texas 78711-3127

OR2002-5909

Dear Mr. Bright:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170900.

The Texas Alcoholic Beverage Commission ("commission") received a request for all public records regarding a certain nightclub's "alcoholic beverage permit or license and applications for original and any renewal permits, records of any and all violations, documents produced and made public at any hearings resulting from violations and the decisions resulting from said hearings." Further, the request seeks "all records pertaining to the charges made, the investigation conducted, and the disposition of said charges." You state that all of the information requested was provided to the requestor except for the original and renewal applications of the permittee. You claim that these applications are excepted from required public disclosure by section 552.101 of the Government Code in conjunction with section 5.48 of the Alcoholic Beverage Code. You have submitted a representative sample of the requested applications for our review.<sup>1</sup>

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 5.48 of the Alcoholic Beverage Code provides as follows:

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permit or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States.

The term "privileged" in this statute has been construed to mean "confidential" for purposes of the Public Information Act. *See, e.g.,* Attorney General Opinion JM-1235 at 2 (1990); Open Records Decision Nos. 186 (1978), 62 (1974). Thus, section 5.48 makes confidential any records required or obtained by the commission, with the exception of "the name, proposed location, and type of permit or license sought in any application for a permit or license or any renewal thereof" and "any periodic report covering the importation, distribution, or sale of any alcoholic beverages required by the Board to be regularly filed by a permittee or licensee."

In this case, the documents at issue appear to be "private records" of a permittee or licensee. It also appears that the information was required or obtained by the commission from the permittee. You state that the submitted documents have not been introduced into evidence in any administrative actions, but you do not state whether the documents have been introduced into evidence in any hearing before a court in this state or the United States. We assume that the documents have not been introduced into evidence in any such hearings.

We note that the submitted information contains the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license. You do not state whether you released this information. Because this information is expressly excluded from the purview of section 5.48, you must release it to the requestor at this time if you have not already done so.

We conclude that the remainder of the submitted information is made confidential by section 5.48 of the Alcoholic Beverage Code and must be withheld per section 552.101 of the Government Code. However, if the submitted documents have been introduced in

evidence in any hearing before a court in this state or the United States, they are not confidential per section 5.48 and must be released to the requestor in their entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

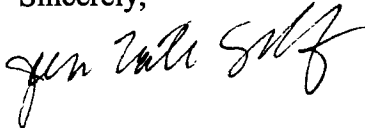
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, *no writ*).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Tate Self". The signature is fluid and cursive, with the first name "Jon" being the most prominent.

Jon Tate Self  
Assistant Attorney General  
Open Records Division

JTS/seg

Ref: ID# 170900

Enc. Submitted documents

c: Mr. William W. Krueger, III  
Fletcher & Springer, L.L.P.  
720 Brazos, Suite 1100  
Austin, Texas 78701  
(w/o enclosures)